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IN THE
COURT OF APPEALS OF INDIANA

JASON A. HOORNEART,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 57A03-0701-CR-1
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE NOBLE SUPERIOR COURT
The Honorable Stephen S. Spindler, Judge
Cause No. 57D01-0406-FD-179

June 15, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Jason A. Hoorneart ("Hoorneart") appeals his sentence for Non-Support of a Dependent Child, as a Class D felony.[1] We affirm.

Issue

Hoorneart raises the issue of whether his sentence is inappropriate.

Facts and Procedural History

On June 10, 2004, Hoorneart was charged by information with Non-Support of a Dependent Child. The charging information noted that Hoorneart was adjudged to be the father of A.D.H. on July 2, 2001, and ordered to pay $115 in weekly child support. The document alleged that as of March 1, 2004, Hoorneart knowingly or intentionally failed to provide support for A.D.H.

On February 1, 2006, Hoorneart pleaded guilty to the charge without the benefit of a plea agreement with the State. On October 9, 2006, the trial court sentenced Hoorneart to an enhanced sentence of two and one-half years in the Indiana Department of Correction. Hoorneart could serve his sentence on a work release program if accepted to such a program.

On November 22, 2006, Hoorneart petitioned the trial court for permission to file a belated notice of appeal, which was granted. This appeal ensued.

Discussion and Decision

At the outset, we observe that Hoorneart committed and originally was charged with this crime in 2004 but was not convicted and sentenced until 2006. In 2005, the legislature replaced the prior sentencing statutes, which provided a "presumptive" sentence for each

class of felony, with new statutes providing for an "advisory" sentence. Both Hoorneart and the State here refer to "presumptive" sentences; in the absence of any argument to the contrary, we will assume the "presumptive" scheme governs this case.

On appeal, Hoorneart contends that his sentence is inappropriate. Specifically, he argues that this Court should revise his sentence because Hoorneart's criminal history does not support an enhanced sentence and there is mitigating evidence. Hoorneart requests that his sentence be revised to the presumptive term of one and one-half years. Pursuant to Indiana Appellate Rule 7(B), he seeks revision of his sentence.

Indiana Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." When reviewing a sentence pursuant to 7(B), the appellate court must give due consideration to the trial court's sentence due to the special expertise of the trial bench in making sentencing decisions. Purvis v. State, 829 N.E.2d 572, 588 (Ind. Ct. App. 2005), trans. denied, cert. denied, No. 05-8651, 74 USLW 3530 (Mar. 20, 2006).

The "nature of the offense" portion of the 7(B) standard speaks to the statutory presumptive sentence for the class of crimes to which the offense belongs. See Williams v. State, 782 N.E.2d 1039, 1051 (Ind. Ct. App. 2003), trans. denied. In other words, the presumptive sentence is intended to be the starting point for the court's consideration of the appropriate sentence for the particular crimes committed. Id. The "character of the offender" portion of the standard refers to the general sentencing considerations and the

[1] Ind. Code § 35-46-1-5(a).

relevant aggravating and mitigating circumstances. Id.

Regarding the nature of the offense, Hoorneart's arrearage at the time of his sentencing was $11,872.02. The amount of arrearage goes to the severity of the crime and the proper length of the sentence. Jones v. State, 812 N.E.2d 820, 826 (Ind. Ct. App. 2004).

In regard to the character of the offender, the trial court found a single aggravator of Hooneart's criminal history and no mitigators. Hoorneart argues that his criminal history does not justify a sentence enhancement. The significance of a defendant's criminal history varies based on the gravity, nature and number of prior offenses as they relate to the current offense. Vasquez v. State, 762 N.E.2d 92, 97 (Ind. 2001). Although Hoorneart's record does not contain any other convictions for non-support of a dependent, his record is quite lengthy. In his youth, Hoorneart was adjudicated a delinquent for criminal mischief and minor consumption of alcohol. He failed to obey the rules of his probation by consuming alcohol and eventually was committed to the Indiana Boys' School based on three incidents of auto theft. As an adult and prior to the current conviction, he was convicted of two Class C, two Class B, and three Class A misdemeanors as well as four Class D felonies. Three of the Class D felonies had been committed within ten years prior to the sentencing for the current conviction. Furthermore, Hoorneart was on probation at the time of the commission of this offense. The frequency and temporal proximity to the current conviction of Hoorneart's previous convictions reflect poorly on Hoorneart's character. We are not persuaded that the enhancement is inappropriate.

Hoorneart also contends that the trial court failed to give significant weight to his

guilty plea. Although Hoorneart did not proffer his guilty plea as a mitigating circumstance to the trial court, our Supreme Court has held that a trial court should be inherently aware that a guilty plea is a mitigating circumstance. See Francis v. State, 817 N.E.2d 235, 237 n.2 (Ind. 2004). However, a trial court is not obligated to weigh or credit the mitigating factors the way a defendant suggests that they should be. Abel v. State, 773 N.E.2d 276, 280 (Ind. 2002).

Here, we initially observe that Hoorneart did not advance an argument to the trial court that his decision to plead guilty should be considered a mitigating circumstance. If a defendant fails to advance a mitigating circumstance at sentencing, this court will presume that the factor is not significant, and the defendant is precluded from advancing it as a mitigating circumstance for the first time on appeal. Simms v. State, 791 N.E.2d 225, 233 (Ind. Ct. App. 2003) Notwithstanding Hoorneart's failure to raise his guilty plea as a possible mitigator, our Supreme Court has also determined that a guilty plea does not automatically amount to a significant mitigating factor. Sensback v. State, 720 N.E.2d 1160, 1165 (Ind. 1999). For instance, a guilty plea does not rise to the level of significant mitigation where the evidence against him is such that the decision to plead guilty is merely a pragmatic one. Id.

Here, Hoorneart pled guilty without the benefit of a plea agreement. However, if Hoorneart had attempted to submit a plea agreement, it would have been rejected because Hoorneart had previously entered a guilty plea, most likely pursuant to a plea agreement, and later changed his plea back to not guilty. At that time, the trial court noted that it would not

accept any future plea agreements. On March 11, 2005, a jury trial was set for February 8, 2006. Hoorneart failed to attend the final pretrial conference, prompting the trial court to issue a bench warrant. The jury trial was later cancelled due to Hoorneart entering a guilty plea on February 1, 2006, seven days before the scheduled trial. It was almost two years before Hoorneart pled guilty. Moreover, he was facing a charge where the evidence of nonpayment was already within court records, making Hoorneart's decision to plead guilty a pragmatic choice. We are not persuaded that Hoorneart's guilty plea warrants a reduction in his sentence.

Affirmed.

SHARPNACK, J., and MAY, J., concur.